In the Supreme Court of the United States.

DECEMBER TERM, 1868.

UNITED STATES, appellants,
vs.
THE STEAMER ANNA PERRET. } No. 28.

Appeal from the Circuit Court for the United States for the eastern district of Louisiana.

STATEMENT FOR THE UNITED STATES.

This case does not materially differ from the others which just precede it. The claimants are H. J. Phelps and J. E. Phelps, of New Orleans, Louisiana, the former of whom is also claimant in the case of the Lelia. (No. 26.)

1. Here the evidence conclusively establishes that the steamer was liable to forfeiture under the act of August, 1861. The testimony of Saunders goes to show that she was employed in the rebel service as a transport in 1863 and 1864, (Record, p. 12;) and Stephens' testimony is to the same effect, (Record, p. 16.) By the former's statement, H. J. Phelps, one of the claimants, was on board of her at the period referred to, though the latter says that a part of the time she was commanded by a Captain Carroll.

But besides the fact thus made to appear, viz., that the steamer was knowingly employed by her owners

in aid of the rebellion, a circumstance is disclosed by the evidence showing that they enjoyed a special privilege from the confederate authorities, which is not susceptible of any other explanation than that they had theretofore been strong adherents to the rebel cause, and willingly and cheerfully performed whatever service with their boat they were called upon to do. It is proven by the testimony of Gresham that the owners were permitted by these authorities to take a cargo of cotton beyond the confederate lines to New Orleans, and bring back a cargo of private stores. Had the owners desired to withdraw from the future performance of rebel service, the opportunity was then presented. The stores brought back by them were seized by the confederates, it is true, but this, as we learn from the testimony of Richard, (Record, p. 19,) was in consequence of their conduct, with reference to the disposition of the stores subsequent to their arrival.

2. Two defences are set up. First, that the unlawful use of the boat was procured by the "application of illegal and irresistible physical force," against the consent of the owners, etc. (Record, p. 11.) Second, that the property was protected by the terms of the convention of May 26, 1865, between General E. K. Smith and Major General E. R. S. Canby, the 4th article whereof stipulates, "that private property will not be interferred with, unless required for public use," etc. (Record, p. 21, 24.)

The only evidence that force was ever used to compel the employment of the steamer, is what is found in the testimony of Freeman, (Record, p. 17,) who was employed on her just at the close of the rebellion, viz., from and after February, 1865. He says that on three occasions she refused to go to certain places, and that in consequence of such refusal she was forced to go; but he never heard the captain assign as a reason for his refusal that he did not wish to serve

the confederate government. The probability is, that on the occasions referred to, if service was declined at all, it was because of the then peculiar condition of the boat, or of the navigation, and not from any reluctance to engage in rebel employment. But this must have transpired subsequent to the aforesaid trip to New Orleans and back, which was performed, according to the testimony of Tyson, in February or March, 1865. (Record, p. 20.) Prior to this period there is no evidence whatever that force was ever employed; and yet, the boat had, as already shown by the testimony of Sanders and Stephens, been engaged in the rebel service throughout the years 1863 and 1864. Sanders, indeed, says that on some occasions the boat was ordered to render services, but he afterwards states that he does not know that there was any occasion for using force. During these two years no instance is mentioned in the testimony of the "application of illegal and irresistible physical force" to coerce the use of the boat against the owner's consent.

In regard to the other defence, it is submitted that the convention of May 26, 1865, afforded no protection to property theretofore liable to seizure and condemnation under any act of Congress. In support of this the case of The Venice, 2 Wallace, is referred to.

W. M. M. EVARTS,
Attorney General.
J. HUBLEY ASHTON,
Asst. Att'y General.